

MINUTES

BOARD OF ADJUSTMENT

TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Regular Meeting

October 23, 2014

The Regular Meeting of the Board of Adjustment was called to order at 7:30 PM in the Public Meeting Room.

It was confirmed that the meeting was being held in conformance with all regulations of the SUNSHINE LAW and proper notice had been given to the Courier News; also, the Agenda had been posted in Town Hall, Board Office, and supplied to the Township Clerk at least forty-eight hours prior to the meeting. The Agenda items will not necessarily be heard in the order listed and the meeting will not continue significantly past 10:30 PM.

Roll Call:

Members present were Mr. Bussicula, Mr. Miller, Mr. Smith, Mr. Siburn, Mr. Sullivan and Mr. Delia. Mr. Boyer and Mr. Henry were absent. Mr. Daniel Bernstein, Board Attorney, was also present.

Applications for Review:

App.#21-14: 65 Heights LLC / Kwak, 65 Park Ave., Bl. 608, Lot 8 (R-10 Zone)

Applicant is proposing to renovate and make alterations to a 3-family dwelling which is located in an area zoned for single-family homes. As required in order to proceed with the project, the Applicant is seeking an appeal/interpretation from the Zoning Board of Adjustment that its current use is and has been a valid conforming three family dwelling.

Mr. Bussicula announced that the hearing of this application is carried to December 11, 2014, with no further notice required.

CARRIED FROM OCTOBER 9, 2014, WITHOUT FURTHER NOTICE:

App.#27-14: The County of Union, The Union County Improvement Authority (UCIA) and Center Management Group LLC, 40 Watchung Way, Block 4002, Lot 15, Block 3401, Lot 50, Block 3303, Lots 1.01 and 1.04 (OL-Zone)

Request to continue existing services at Runnells Specialized Hospital with private operator contrary to OL Zone which requires a "governmental use."

Steven Merman, Assistant County Counsel for Union County, stated that the application refers to the proposed transfer of Runnells Specialized Hospital to a private operator. There was a public hearing before the Township Council and a transcript of that hearing is available. During the course of the due diligence in connection with the

transfer agreement, it was discovered that according to the zoning ordinance the property is in the Open Land zone and there are limited uses permitted. The Township Zoning Officer made a determination that the hospital would not be a permitted use.

Stan Slachetka, Planner, was sworn, gave his educational and professional background and was accepted as an expert witness. Mr. Slachetka presented Exhibit A-1 – aerial photograph of the site showing four separate parcels. Mr. Slachetka indicated on the exhibit the location of the hospital building, the access roads and parking, the sidewalks, lawn and landscaping, storm water management facility and pump station, Route 78 and the substantial wooded area between the hospital and the adjoining residential development. He stated that the site is approximately 44 acres, the main hospital building is 178,000 square feet, there is a 4800 square foot maintenance building and the hospital is licensed for 300 long term care beds and 44 interim care beds.

Mr. Slachetka discussed the history of the development of the site since 1912 including various approvals from the Planning Board and Board of Adjustment. The current hospital was built in 1990 and is run by Union County. He has reviewed the Master Plan and zoning ordinance and the current zoning for this site is OL – Open Land. Permitted uses include public parks, playgrounds, swimming pools, golf courses and other recreational areas. He has reviewed the information provided by the zoning officer. The zoning officer indicated in his determination that the sale of the facility is to a private entity, Center Management Group LLC, who will operate the facility without any change in services provided. The sale will incorporate a deed restriction limiting the use of the property as a hospital for 99 years. The use currently is for a hospital operated by a public county and with the transfer the use will be the same except that it will be operated by a private company. The zoning officer indicated that the change of entity that operates the use would constitute a non-permitted use. Mr. Slachetka stated that the hospital use was in place at the time that the OL district was created and that use will continue.

Mr. Merman stated that the hospital use was in existence at the time of the last Master Plan review. He stated the opinion that because the use existed at the time the ordinance was adopted the use was permitted. The facility is now being transferred to a private entity but nothing is going to change.

Mr. Slachetka reviewed the negative and positive criteria with respect to the zoning officer's interpretation. He stated that it is his understanding that the use of the facility will be exactly the same. If the Board makes a determination that the use is not permitted a use variance would be required. Under the Municipal Land Use Law a hospital is an inherently beneficial use and serves the public good and therefore satisfies the criteria of the statute. There is no substantial impairment of the zone plan or substantial detriment to the public good. As can be seen from Exhibit A, the buildings are set back a substantial distance from the roads and residential areas.

Traffic will not increase because the use will remain the same. Any detrimental impacts are already being experienced and will not change by change of ownership. Mr. Slachetka stated that in his opinion, there is no substantial impairment to the zone plan or to the public.

Mr. Merman stated that the closing is anticipated to take place on or about December 1, 2014 and they anticipate providing the survey to the Board at least one week prior to closing. The County has no objection to conditioning the certificate of occupancy on the County providing the survey.

In response to questions regarding a previous application for subdivision of the property, Mr. Slachetka stated that since this is in the OL district a subdivision to create a residential use would not be permitted. A subdivision for another public use that is permitted could be done. Mr. Merman noted that there is a 99 year deed restriction that limits the use to a hospital and ancillary uses.

Mr. Bernstein stated that the Board does not know what might happen at the County level and he would recommend that the Board find it is not a permitted use and that a D variance is required.

Open to Public

The hearing was opened to the public for questions regarding Mr. Slachetka's testimony. There were no members of the public who had questions.

Michael Hotz, representative of Center Management, was sworn and stated that long term care beds require a license from the State and are subject to the legal requirements of the State health code. The State is not allowing for additional beds at this time and in his opinion the hospital will be profitable if properly run. There are no other uses contemplated and any other use would require State approval.

In response to questions from the Board, Mr. Hotz stated that although he cannot speak on their behalf, he believes Center Management would agree to a condition that it remain a profit making corporation and not become a non-profit. There will be no changes in signage.

Open to Public

The hearing was opened to the public for questions regarding Mr. Hotz's testimony. There were no members of the public who had questions.

Frank Guzzo, Director of Human Services for Union County, was sworn. He stated that he has been involved in the negotiation of the contract for transfer of the facility. The contract included the 99 year deed restriction that the facility will be used as a hospital and agreement that no resident in the long term care would be moved. The existing signage of Runnells will continue to be used and the directional signs throughout Berkeley Heights will not change.

Open to Public

The hearing was opened to the public for questions regarding Mr. Guzzo's testimony. There were no members of the public who had questions.

Mr. Merman stated that the roadways within the hospital property are private and not the responsibility of the municipality. The breakdown of taxes is 50% to school taxes, 20% to the County and the remainder to the Township.

Open to Public

The hearing was opened to the public for comments or questions regarding the application. There were no members of the public who had comments or questions.

A motion was made by Mr. Smith, seconded by Mr. Delia, with respect to Application # 27-14: The County of Union, The Union County Improvement Authority (UCIA) and Center Management Group LLC, 40 Watchung Way, Block 4002, Lot 15, Block 3401, Lot 50, Block 3303, Lots 1.01 and 1.04 (OL-Zone) to deny the appeal of the Zoning Officer's denial of approval to continue existing services at Runnells Specialized Hospital with private operator, the Board's findings to be set forth in a Resolution of Memorialization to be adopted by the Board. The voice vote was unanimous with Mr. Bussiculo, Mr. Miller, Mr. Smith, Mr. Siburn, Mr. Sullivan and Mr. Delia voting in favor of denial.

A motion was made by Mr. Miller, seconded by Mr. Siburn, with respect to Application # 27-14: The County of Union, The Union County Improvement Authority (UCIA) and Center Management Group LLC, 40 Watchung Way, Block 4002, Lot 15, Block 3401, Lot 50, Block 3303, Lots 1.01 and 1.04 (OL-Zone) to approve the granting of a "D" variance for approval to continue existing services at Runnells Specialized Hospital with private operator, subject to the conditions as discussed and further subject to the standard conditions, that shall be set forth in a Resolution of Memorialization to be adopted by the Board. The voice vote was unanimous with Mr. Bussiculo, Mr. Miller, Mr. Smith, Mr. Siburn, Mr. Sullivan and Mr. Delia voting in favor.

App.#28-14: Edward Koch, 170 Killarney Drive, Block 3505, Lot 35 (R-20 Zone)

Proposed inground pool with an at grade surrounding paver patio, waterfall feature and a raised patio (15' x 15' x 4' high) at the exit slider doors from the rear of the house. Relief is needed from Section 6.1.1B "Schedule of General Regulations" because 1) the accessory rear yard setback is proposed to be less than the required 15' and 2) the proposed side yard setback is less than the required 12'. Also, the proposed "other" and "total" lot coverages will exceed the maximum permitted coverages of 10% and 25%, respectively. The at grade pool surround will be constructed with a permeable paver system and was therefore not counted in the calculation of "other" coverage. Nonconforming issues are lot depth, lot area, principal front yard setback and existing building coverage.

Leslie Koch and Edward Koch were sworn and stated that they want to put in a pool and need variances for lot coverage and rear setback. They have made the proposed pool smaller to decrease the coverage to 30.45%. They previously proposed a 650 square foot pool and now it is 600 square feet.

In response to the Board's concerns regarding water runoff, Mr. Koch stated that there will be a water capturing system and water will be transferred to the drainage system. They have put up a retaining wall and excess water from the pool will flow into the drainage system in it. There will be a combined drainage system with their neighbor that involves a system that exits to a seepage pit. They will comply with whatever the Township Engineer requires.

Don Antisell, Anthony & Sylvan Pools, pool design consultant, was sworn and stated that he worked on the plans in conjunction with the engineer. The engineer has proposed a seepage pit to collect water and channel it into a pit. Whatever the Township Engineer determines is necessary to control water will be done.

Discussion took place regarding the required setbacks and Mr. Antisell stated that where the side yard setback required is 12' they are proposing 10' and where the rear yard setback required is 15' they are proposing 10'. Mr. Koch stated that they could not place the pool closer to the house because of safety concerns.

In response to questions from the Board, Mr. Koch stated that the distance from his house to the property of the neighbor on the left side is about 35-45' and from the pool about 40'. With regard to drainage they will do whatever the Township Engineer requires.

Open to Public

The hearing was opened to the public for questions or comments regarding Mr. Koch's testimony and Mr. Antisell's testimony.

Jay Bohn, attorney representing Mr. and Mrs. DiQuolo, 101 Highland Circle, owners of the property below the subject property, stated that he reviewed the application and there is a survey dated 2007 that shows a couple of rock walls. He asked if those rock walls still exist.

In response to questions from Mr. Bohn, the applicant and Mr. Antisell stated that the rock walls shown on the 2007 survey do not still exist. The proposed waterfall will be no higher than 4', they have not yet decided whether the proposed fence will be solid or not but it will be aluminum and will comply with all township requirements. Mr. Koch stated that a permit was obtained for the 5' high retaining wall but he is not certain if a certificate of approval has been obtained yet since his neighbor is also doing a retaining wall and the two tie in together.

Mr. Bernstein noted that there is a township official that would enforce that approval process. The approval could be subject to verification that the retaining wall received appropriate permits and approvals.

In response to further questions from Mr. Bohn, Mr. Koch stated that the fence will be in front of the retaining wall, not on top of it, his house has a basement, the water capacity of the proposed pool is 24,000 gallons, and the lot coverage calculation did not include the front walk because that is permeable.

Mr. Bohn stated that to the extent that any variance is granted the Board should consider the negative criteria and the effect on his clients' property. His clients' primary concern is the proximity of the pool to the rear property line. He requested that the Board require that there be a solid fence and buffering between the properties.

Mr. Koch presented Exhibits A-1 and A-2. Exhibit A-2 is a photograph of the neighbor's house showing the distance from his property which is about 110'. Exhibit A-1 shows the width of the house and the reason for the location to make it safe for children.

It was noted that the resolution will provide that there will be a buffer and screening.

Open to Public

The hearing was opened to the public for comments or questions regarding the application. There were no members of the public who had comments or questions.

Discussion took place regarding the drainage and the proposed waterfall. The resolution will provide that the applicant has to apply to the Township Engineer for approval of the detention plan. The waterfall will not be more than 4' high, any lighting will be turned off by 10 pm and there will be no slide.

A motion was made by Mr. Sullivan, seconded by Mr. Delia, to approve Application # 28-14: Edward Koch, 170 Killarney Drive, Block 3505, Lot 35 (R-20 Zone) including variances requested, subject to the conditions discussed with regard to the retaining wall, drainage plan, fence, landscaping, and waterfall, and subject to the customary pool conditions in the township ordinance that shall be set forth in a Resolution of Memorialization to be adopted by the Board. The voice vote was unanimous with Mr. Bussiculo, Mr. Miller, Mr. Smith, Mr. Siburn, Mr. Sullivan, and Mr. Delia voting in favor.

App.#26-14: Ramesh & Sheela Raman, Kuntz Avenue, Block 301, Lot 18 (R-15 Zone)

Proposed construction of a single-family dwelling located on a vacant corner lot fronting Kuntz Avenue and Camptown Drive. Relief is needed from Section 6.1.1B "Schedule of General Regulations" due to an insufficient rear yard setback and "other" coverage which exceeds the maximum allowed. Variances are also needed for a) the proposed driveway which would be 3.5 ft. off of the side property line (required: 5 ft. according to Section 11.1.7A); b) a proposed boardwalk along the driveway, which would be an accessory structure that is prohibited in the front yard by Section 3.1.1B.4. The plan indicates that the boardwalk would be constructed immediately adjacent to or on the shared side property line with Bl. 301, L. 19; c) the "Building Overhang" depicted on the plans as a carport which is a prohibited use as per Section 6.3.1E.1; d) not adhering to Section 6.3.10A. Residential Garage Construction because an enclosed garage is not proposed; e) constructing the driveway with stone material while a paved driveway is required by ordinance; f) non-conforming lot width.

Ramesh Raman, applicant, was sworn.

David Fantina, project engineer, was sworn, gave his professional and educational background and was accepted as an expert witness. Mr. Fantina

stated that he prepared the plans for the property that is located at the corner of Kuntz Avenue and Camptown Drive. Camptown is an unimproved street not up to residential road construction standards and the property is significantly affected by wetlands and flood hazard.

Mr. Fantina presented Exhibit A-1 – colorized version of the plan. He stated that the red line shows the location of the wetlands and the green line indicates the 50' wetlands transition area. The property is very constrained with only a small piece of the property not affected. The only place for the location of a house is outside the wetlands transition area. That location violates the rear yard setback and requires variances. The applicant submitted this plan to the DEP and it was approved. The property is also impacted by the flood plan and the first floor of the house has to be above sea level so Mr. Raman proposes to put the house on stilts. The environmental impact will be minimized because flood waters can move under the house.

In response to a question from the Board as to the difficulty of building on this lot, Mr. Fantina stated that there are lots that are difficult and unbuildable. They looked at the property and determined that it could be built on with a specific kind of house. As part of the DEP process an attempt was made to sell the property but there were no interested buyers. The DEP permits obtained include freshwater wetlands permit for road crossing, permit for underground utility lines to connect to the house and permit for trails and boardwalks. The proposed driveway will have a boardwalk that will be raised approximately 12".

Mr. Fantina stated that the variances being requested include rear yard setback where 40' is required and 22' is proposed, lot coverage for other than building where 10% is permitted and 15.2% is proposed, no garage, carport, location of driveway 3½' from the property line where 5' is required, walkway accessory structure on the property line, and unpaved stone driveway. The applicant realizes that there are a number of variances but there is no other way to place a house on this property and meet the DEP requirements.

Mr. Fantina presented Exhibit A-2 - rendering of proposed house. In response to questions, Mr. Fantina stated that the walkway will start at 12" but will go up to 9' to reach the house. Tree removal will be constrained since they cannot touch anything in the wetlands area. The rear yard of the neighbor will be behind proposed house.

Open to Public

The hearing was opened to the public for questions or comments regarding the application.

Victor Guidetti, 55 Kuntz Avenue, was sworn and stated that he is concerned about flooding. He has lived there for 15 years and has seen flooding continue to worsen. The property is underwater more often than not. Five years ago a portion of the ditch was filled in which has made a major change in flooding conditions that have worsened. He has lost a portion of his rear property. He went to town and talked to the Engineer who didn't respond to the issue and told him to take it up with the County. He is also concerned about the height of the building and the removal of trees and he said he did not understand how this would be considered a hardship case.

Mr. Raman said that the first floor of the house will be 9' above grade so the height would be closer to 40'.

Mr. Bussicula noted that this would be an important issue.

Mr. Bernstein explained the meaning of hardship as it relates to the inability to use a property and asked Mr. Fantina to meet with Mr. Guidetti to discuss drainage.

Timothy Lake, 43 Kuntz Avenue, was sworn and said he is concerned about where the water will go off the property. He stated that if the ditch is reinstated he will get more water on his property.

Mr. Fantina stated that the run off will not be affected and the water will stay on the applicant's property.

Jim Banks, 33 Kuntz Avenue, was sworn and stated that his house has been under water several times. He has lived there for 20 years and the applicant's property has been completely surrounded by water. If the Board allows this the house will be under water and it will be disaster for neighborhood.

Mr. Fantina stated that the applicant knows it is a flood area and that is why the house is proposed to be built on piers. He believes that water that falls on this property will stay on the property and nothing being proposed will increase the neighborhood flooding. He believes the impact on the neighbors will be negligible.

The hearing of the application was carried to November 13, 2014. New notice will be required if the height variance was not noticed previously.

Adoption of Minutes

October 9, 2014 Regular Meeting

A motion was made by Mr. Siburn, seconded by Mr. Smith, and carried by unanimous voice vote to adopt the minutes of the October 9, 2014 Regular Meeting as presented.

Adjournment:

A motion was made by Mr. Delia, seconded by Mr. Miller, to adjourn the meeting. The voice vote was unanimous and the meeting was adjourned at 11:00 PM.

Regina Giardina, Secretary Pro Tem